

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC#: 11/19/19
DATE FILED: 11/19/19

MICHAEL CHRISTY,

Plaintiff,

-against-

**WARDEN OF RIKERS ISLAND S.
BASTIEN; BELLEVUE HOSPITAL
ORTHO-TEAM DRS. TISHVANI &
STEVENS; RIKERS ISLAND MEDICAL
STAFF; INTAKE M.D. NAME UKN; DR.
HUGGINS; PA GLENDA SHEARN,**

Defendants.

19-CV-9666 (ALC)

ORDER OF SERVICE

ANDREW L. CARTER, JR., United States District Judge:

Plaintiff filed this *pro se* action under 42 U.S.C. § 1983, alleging that Defendants violated his constitutional rights. By order dated October 21, 2019, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis*.

A. Waiver of Service

The Clerk of Court is directed to notify the New York City Department of Correction and the New York City Law Department of this order. The Court requests that the Warden of Rikers Island waives service of summons.

B. Order of Service

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)). Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that the summons and complaint be served within 90 days of

the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and complaint until the Court reviewed the complaint and ordered that a summons be issued. The Court therefore extends the time to serve until 90 days after the date the summons is issued. If the complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App'x 50, 52 (2d Cir. 2010) ("As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals' failure to effect service automatically constitutes 'good cause' for an extension of time within the meaning of Rule 4(m).").

To allow Plaintiff to effect service on Defendants Dr. Tishvani, Dr. Stevens, Dr. Huggins, and PA Glenda Shearn through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (USM-285 form) for each of these defendants. The Clerk of Court is further instructed to issue a summons and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon these defendants.

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

Under *Valentin v. Dinkins*, a *pro se* litigant is entitled to assistance from the district court in identifying a defendant. 121 F.3d 72, 76 (2d Cir. 1997). In the complaint, Plaintiff supplies sufficient information to permit the New York City Department of Correction (DOC) to identify: (1) the Unknown Intake Doctor who allegedly "ignored the swelling in" Plaintiff's foot and ordered that Plaintiff be in general population without a wheelchair; and (2) a "clinic doctor"

who “knew the results of the broken screws from walking and did not send [Plaintiff] to the infirmary.” It is therefore ordered that the New York City Law Department, which is the attorney for and agent of DOC, must ascertain the identity of each John Doe whom Plaintiff seeks to sue here and the address where these defendants may be served.¹ The Law Department must provide this information to Plaintiff and the Court within sixty days of the date of this order.

Within thirty days of receiving this information, Plaintiff must file an amended complaint naming the John Doe defendants. The amended complaint will replace, not supplement, the original complaint. An amended complaint form that Plaintiff should complete is attached to this order. Once Plaintiff has filed an amended complaint, the Court will screen the amended complaint and, if necessary, issue an order directing the Clerk of Court to complete the USM-285 forms with the addresses for the named John Doe Defendants and deliver all documents necessary to effect service to the U.S. Marshals Service.

CONCLUSION

The Clerk of Court is directed to mail a copy of this order to Plaintiff, together with an information package.

The Clerk of Court is further instructed to complete the USM-285 forms with the addresses for Dr. Tishvani, Dr. Stevens, Dr. Huggins, and PA Glenda Shearan, and deliver all documents necessary to effect service to the U.S. Marshals Service.

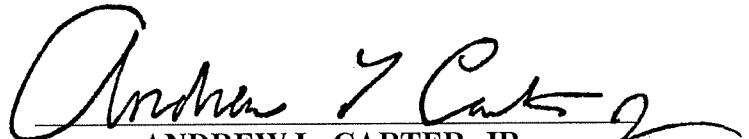
¹ If the Doe defendant is a current or former DOC employee or official, the Law Department should note in the response to this order that an electronic request for a waiver of service can be made under the e-service agreement for cases involving DOC defendants, rather than by personal service at a DOC facility. If the Doe defendant is not a current or former DOC employee or official, but otherwise works or worked at a DOC facility, the Law Department must provide a residential address where the individual may be served.

The Clerk of Court is directed to mail a copy of this order and the complaint to the New York City Law Department at: 100 Church Street, New York, N.Y. 10007.

An "Amended Complaint" form is attached to this order.

SO ORDERED.

Dated: November 19, 2019
New York, New York



ANDREW L. CARTER, JR.
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

1. Dr. Tishvani
Bellevue Hospital Orthopedic Surgeon
462 First Avenue
New York, N.Y. 10016
2. Dr. Stevens
Bellevue Hospital Orthopedic Surgeon
462 First Avenue
New York, N.Y. 10016
3. Dr. Huggins
PAGNY Correctional Health Services
c/o Gwendolyn Renee Tarver
49-04 19th Avenue, 1st Floor
Astoria, NY 11105
4. PA Glenda Shearn
PAGNY Correctional Health Services
c/o Gwendolyn Renee Tarver
49-04 19th Avenue, 1st Floor
Astoria, NY 11105